

## **REMARKS**

The Office Action dated November 26, 2008 has been received and reviewed. This response, submitted along with a Request for Continued Examination (RCE), is directed to that action.

At the outset, the applicants would like to extend their gratitude to the Examiner for the courtesies she extended to the applicant's attorney during the teleconference on February 18, 2009. While no formal agreement was reached at that time, the amendments and remarks herein are believed to address the pending issues.

Claims 1-4 and 19 have been amended, and claim 18 has been cancelled. Support for the claim amendments can be found in paragraph [0041] of the published application US 2005/0245419 A1, and in claim 18 as originally filed. No new matter has been added.

The applicants respectfully request reconsideration in view of the foregoing amendments and the following remarks.

### **Claim Rejections- 35 U.S.C. §103**

The Examiner rejected claims 1-8, 10-15, 18-32 and 34 under 35 U.S.C. §103(a) as obvious over Smerznak et al. (WO 99/00477); and claim 33 under 35 U.S.C. §103(a) as obvious over Smerznak in view of Fonsny (US 4,846,992). The applicants respectfully traverse these rejections. The presently claimed invention now relates, in pertinent part, to a gel having a water content of between about 20% to 65%, which is significantly outside Smerznak's water content range of 0-5%. The applicants submit that a person of ordinary skill in the art would not be motivated to increase the water content to such a degree based on the teachings of Smerznak, as there is absolutely no suggestion to increase the water content.

If anything, a *prima facie* case of obviousness is rebutted because Smerznak teaches away from the presently claimed invention. The presently claimed invention seeks to have a higher water content (greater than 5% to 65%) with a high ionic strength to prevent the particles from deteriorating in storage. (See paragraph [0041] of US 2005/0245419). Contrarily, Smerznak explicitly states that that “the amount of water should in no event exceed about 5% by weight of the compositions herein.” (Smerznak, page 22, lines 5-6). In fact, Smerznak actually prefers that the water content be as low as possible, stating “[m]ore preferably, water content of the non-aqueous detergent compositions herein will comprise *less than about 1% by weight*”. (Page 22, lines 7-8)(emphasis added). A person of skill in the art would undoubtedly interpret this as Smerznak teaching away from a gel having a water content greater than 5%, much less at least about 20%, as in the presently claimed invention. A *prima facie* case of obviousness is rebutted by a showing that the art, in any material aspect, teaches away from the claimed invention. See *In re Geisler*, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1990).

The applicants respectfully submit that Fonsny was cited against the specific embodiment taught in present claim 33, and does not remedy any of the deficiencies of Smerznak discussed herein. Accordingly, the applicants submit the presently claimed invention is not obvious in view of Smerznak, and respectfully request that the Examiner withdraw this rejection.

The Examiner also rejected claims 1-8, 10-15, 20-22, 29-32 and 34-42 under 35 U.S.C. §103(a) as obvious over Broeckx (WO 00/47707); and claim 33 under 35 U.S.C. §103(a) as obvious over Broeckx in view of Fonsny. The applicants respectfully traverse this rejection.

Present claims 1-4 now incorporate the limitation of former claim 18, which requires that the composition comprise a non-aqueous component having a salt content of at least about 70% by weight. The applicants note that claim 18 was not included in the rejection over Broeckx or

Broeckx in view of Fonsny, and respectfully submit that the amendment herein therefore renders the present rejection moot. Furthermore, the applicants submit that there is nothing in either Broeckx or Fonsny that would motivate the skilled artisan to prepare a composition according to the presently claimed invention. Accordingly, the applicants respectfully request that the Examiner withdraw this rejection.

The applicants submit that the claims are now in condition for allowance, and such favorable action is respectfully requested. If any issues remain, the resolution of which can be advanced through a telephone conference, the Examiner is invited to contact the applicant's attorney at the phone number listed below.

## CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefore. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

### ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,

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